

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

v.

**RALYATOU DIALLO**

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:

**C.A. No. M18-0016  
18408504832**

**DECISION**

**PER CURIAM:** Before this Panel on February 27, 2019—Administrative Magistrate Abbate (Chair), Associate Judge Almeida, and Chief Magistrate DiSandro, sitting—is Ralyatou Diallo’s (Appellant) appeal from a decision of Chief Judge Donna M. Nesselbush (Trial Judge) of the Pawtucket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to traffic devices.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**I**

**Facts and Travel**

On July 1, 2018, Officer Matthew Choquette (Officer Choquette) of the Pawtucket Police Department responded to a reported motor vehicle accident at the intersection of Middle Street and East Street in the City of Pawtucket. (Tr. at 2.) Upon arriving at the scene, Officer Choquette conducted an investigation and issued Appellant, the operator of a vehicle involved in the collision, a citation for the above-referenced violation. *See* Summons 18404504832.

The Appellant contested the charged violation, and the matter proceeded to trial on September 21, 2018. (Tr. at 1.) At trial, Officer Choquette testified that when he arrived on the scene, he observed Appellant’s vehicle “on the sidewalk through a fence that struck [an

unoccupied] vehicle that was parked in a parking lot[,]” and another vehicle—driven by Christina Owitty (Ms. Owitty)—sitting in the intersection of Middle and East Street. *Id.* at 2. Appellant and Ms. Owitty were still sitting in their vehicles when Officer Choquette arrived. *Id.* Additionally, Officer Choquette testified that he has been employed as a police officer by the Pawtucket Police Department for nine months, has trained in accident investigation at the police academy, and has had experience in accident investigation on the job. *Id.*

Officer Choquette further testified that he spoke with Appellant, who “stated that she was coming through the intersection and she heard a loud bang. She didn’t remember anything else as far as what happened. Why she was in an accident, or what was the cause of it.” *Id.* at 5. Officer Choquette also spoke, at the scene of the accident, with Ms. Owitty who told Officer Choquette that “she was trying to travel through the intersection and [Appellant’s] vehicle came out of nowhere striking her [vehicle].” *Id.* at 6. An independent witness—who did not testify at trial—also approached Officer Choquette and described what he witnessed. *Id.*

Lastly, Officer Choquette testified that he observed the traffic light in question to ensure that it was functioning properly. *Id.* at 7. Officer Choquette noted that “it was in the middle of the afternoon so there would be lots of cars [ ] having problems if the lights were not turning red and green in the sequence that they’re supposed to.” *Id.*

Ms. Owitty also testified at trial. *Id.* at 8. Ms. Owitty stated that on the day of the accident, her vehicle was the first car stopped at the traffic light on Middle Street, which is a four-way intersection. *Id.* at 8-9. She explained that her traffic light was red, and when the traffic light turned green, “I started to proceed slowly, like I was pushing my gas to proceed, I just heard a big bang on my car. And my car turned, [Appellant] hit me and my car turned.” *Id.*

at 9. Ms. Owitty further testified that Appellant's car then "swerved . . . to the other car that was parked across the street." *Id.* at 9-10.

After hearing all the testimony, the Trial Judge recounted the facts asserted by Officer Choquette and Ms. Owitty and then stated her findings of fact on the record. *Id.* at 13. The Trial Judge found the testimony of both Officer Choquette and Ms. Owitty to be credible, also noting that as the Appellant did not testify on her behalf at trial, there is no evidence rebutting said testimonies. *Id.* In doing so, the Trial Judge found that Ms. Owitty was "stopped [ ] at an intersection, at a red light . . . the red light turned green and [ ] she you know, proceeded thought [sic] the intersection when she was struck by a vehicle that was driven by [Appellant]." *Id.* As such, the Trial Judge stated, "My only conclusion I can draw from that is that [Appellant] proceeded through the [ ] red light and hit [Ms. Owitty]." *Id.*

The Trial Judge found Appellant guilty of the charged violation, and Appellant subsequently filed this timely appeal. Forthwith is this Panel's decision.

## II

### Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

"The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

"(1) In violation of constitutional or statutory provisions;

- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

### III

#### Analysis

On appeal, Appellant contends that the Trial Judge’s decision sustaining the charged violation was “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]” Sec. 31-41.1-8(f)(5). Specifically, Appellant asserts that the testimony presented at trial does not establish by clear and convincing evidence that Appellant proceeded through a red light. *See Appellant’s Notice of Appeal*, at 2.

Rhode Island Traffic Tribunal Rule of Procedure 17(a) requires that the prosecution prove the violation “to a standard of clear and convincing evidence.” Evidence satisfying this standard is evidence which “produce[s] in the mind of the factfinder a firm belief or conviction that the allegations in question are true.” *Cahill v. Morrow*, 11 A.3d 82, 88 n.7 (R.I. 2011) (quoting 29 Am. Jur. 2d *Evidence* § 173 at 188–89 (2008)). Importantly, however, this standard “does not require that the evidence negate all reasonable doubt or that the evidence must be uncontroverted.” *Id.*

Furthermore, “[t]he task of determining the credibility of witnesses is peculiarly the function of the trial justice when sitting without a jury.” *DeSimone Electric, Inc. v. CMG, Inc., et al.*, 901 A.2d 613, 621 (R.I. 2006) (quoting *Walter v. Baird*, 433 A.2d 963, 964 (R.I. 1981)). During the “fact-finding process, the trial justice may ‘draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.’” *Id.* Thus the Trial Judge’s factual findings are “entitled to great weight and will not be overturned unless the factual finding[s] [are] clearly wrong or unless the trial court overlooked or misconceived material evidence.” *Norton v. Courtemanche*, 798 A.2d 925, 932 (R.I. 2002) (quoting *Walsh v. Cappuccio*, 602 A.2d 927, 930 (R.I. 1992)).

Here, Appellant was charged with violating § 31-13-4, which states:

“The driver of any vehicle shall obey the instructions of any official traffic control device applicable to him or her placed in accordance with the provisions of chapters 12 – 27 of this title, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in those chapters.”

Sec. 31-13-14. The clear and unambiguous language of § 31-13-4 conveys the Legislature’s intent to maintain safety on the roads by ensuring that motorists comply with traffic control devices. *See* §31-13-4; *Lehigh Cement Co. v. Quinn*, 173 A.3d 1272, 1276 (R.I. 2017) (“[W]hen

the language of a statute is clear and unambiguous, [the] court must interpret the statute literally and must give the words of the statute their plain and ordinary meaning.”). Therefore, this Panel must determine whether the evidence in the record supports the Trial Judge’s finding that Appellant failed to comply with a traffic control device.

Based on a thorough review of the record, this Panel is satisfied that the Trial Judge’s decision sustaining the charged violation is supported by the evidence presented at trial. *See Link*, 633 A.2d at 1348. The Trial Judge heard uncontroverted testimony from Ms. Owitty that her traffic light changed from red to green, at which point Ms. Owitty proceeded forward until Appellant’s vehicle struck her vehicle. (Tr. at 9-10); *Norton*, 796 A.2d at 932 (R.I. 2002) (A trial judge or magistrate “may not arbitrarily disregard uncontradicted testimony” unless such testimony “contains inherent improbabilities or contradictions[.]”). Combining Ms. Owitty’s testimony with Officer Choquette’s testimony that the traffic lights were in proper working order, the Trial Judge reasonably inferred that Appellant failed to comply with a traffic device by proceeding through a red light. *Id.* at 7; *see also State v. Golden*, 430 A.2d 433, 438 (R.I. 1981) (“[A]n ‘inference’ is a deduction that the trier of fact is entitled to make from a proven or admitted fact . . . based upon some evidence, direct or circumstantial[.]”).

Since the Trial Judge’s reasonable inferences are “entitled on review to the same weight as other factual determinations,” *DeSimone Electric, Inc.*, 901 A.2d at 621, this Panel cannot substitute its judgment for that of the Trial Judge. *Link*, 633 A.2d at 1348. Accordingly, this Panel finds that the Trial Judge’s decision is not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Sec. 31-41.1-8(f)(5).

**IV**

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(5). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

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Administrative Magistrate Joseph A. Abbate (Chair)

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Associate Judge Lillian M. Almeida

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Chief Magistrate Domenic A. DiSandro, III

DATE: \_\_\_\_\_